



BOND, SCHOENECK & KING, PLLC
ATTORNEYS AT LAW ■ NEW YORK FLORIDA KANSAS

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HOWARD M. MILLER
Direct: 516-267-6318
Hmiller@bsk.com

April 9, 2008

VIA FACSIMILE: (212) 805-7924

MEMO ENDORSED

Hon. Sidney H. Stein
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1010
New York, NY 10007

Re: *Wharton Capital Partners Ltd. and Wharton Capital Markets LLC v. XsunX, Inc.,*
Index No. 08-0056

Dear Judge Stein:

We represent Defendant XsunX, Inc. in the above referenced matter.

This letter is being submitted jointly by both parties. As you suggested, the parties have agreed to pursue mediation with Magistrate Maas. A conference is scheduled for May 1, 2008 at 10:00 am. Representatives from both parties with settlement authority will attend.

In order to avoid unnecessary legal fees that could be an impediment to an amicable resolution, the parties jointly request that the current briefing schedule for the Defendant's contemplated motion pursuant to Fed. R. Civ. P. 12(c) be extended. In what we hope would be the unlikely event that mediation proves unsuccessful, we propose a revised briefing schedule as follows: (1) The Defendant will serve its 12(c) motion on or before May 12, 2008; (2) the Plaintiff will serve its opposition papers on or before May 30, 2008; (3) Defendant will serve its reply papers on or before June 13, 2008.

Please let us know if this revised schedule is acceptable to the Court. There has been no prior application to extend this briefing schedule.

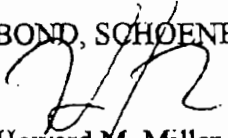
SO ORDERED 4/9/08

SIDNEY H. STEIN
U.S.D.J.

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Thank you for your courtesy.

BOND, SCHOENECK & KING, PLLC


Howard M. Miller

cc: Jeffrey A. Udell, Esq. (via facsimile: 212-451-2222)